

## **2004 LAW BOOK UPDATES**

All New Code Sections or any Changes to existing Codes were effective July 1, 2004.

- **TITLE 37 - CHAPTER 1**  
**IDAHO FOOD, DRUG AND COSMETIC ACT**

**New Code Section -**

37-117A. Reporting and disclosure requirements for employment related adulteration or misappropriation of certain drugs. (1) When the employment of a health care provider has been terminated, either voluntarily or involuntarily, for adulteration or misappropriation of controlled substances, as defined in chapter 27, title 37, Idaho Code, the employer shall, within thirty (30) days of the termination, furnish written notice of the termination, described herein as "notice of termination," to the health care provider's professional licensing board of the state of Idaho, which shall include a description of the controlled substance adulteration or misappropriation involved in the termination. An employer who in good faith provides such information shall not be held civilly liable for the disclosure or the consequences of providing the information. There is a rebuttable presumption that an employer is acting in good faith when the employer provides such information. The presumption of good faith is overcome only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead. For the purposes of this section, "actual malice" means knowledge that the information was false or given with reckless disregard of whether the information was false. For the purposes of this section, the term "health care provider" means any person licensed by a professional licensing board of the state of Idaho whose license permits the health care provider to dispense or administer controlled substances. For the purposes of this section, "employer" means a person or entity licensed under chapter 18, title 54, Idaho Code, or chapter 13, title 39, Idaho Code, who employs a health care provider or providers.

(2) A professional licensing board that receives a notice of termination from an employer pursuant to subsection (1) of this section shall maintain the notice of termination for the health care provider. The notice of termination shall be subject to disclosure in accordance with the provisions of subsection (3) of this section.

(3) Any prospective employer of a health care provider shall, before hiring such health care provider, request in writing that the health care provider's professional licensing board furnish the prospective employer any notice of termination maintained by the board with respect to the health care provider. The prospective employer shall maintain the confidentiality of such information and shall not disclose it to any other person or entity without the prior written approval of the health care provider or as required by law, court order or the rules of civil procedure. The professional licensing board shall require, as a condition of furnishing the notice of termination, that the prospective employer file a written request for the health care provider's notice of termination, stating under oath that the request for the notice of termination is made for a bona fide hiring purpose, that the request is made pursuant to the provisions of this section, and that the prospective employer will not disclose the information to any other person or entity without the prior written approval of the health care provider or as required by law, court order or rules of civil procedure. In the event that the prospective employer discloses the information in the notice of termination to any other person or entity in violation of the provisions of this

section, and unless the disclosure is required by law, court order or the rules of civil procedure, the health care provider may pursue a civil cause of action against the prospective employer for a breach of the health care provider's right of privacy. Upon receipt of a request made in accordance with this section for a health care provider's notice of termination, the professional licensing board shall furnish the notice of termination to the prospective employer. The professional licensing board shall not be held liable for the correctness or completeness of the information contained in the notice of termination and shall include a disclaimer statement on all released information, attesting that the information has not been verified by the professional licensing board. An employer who obtains a notice of termination from the appropriate professional licensing board as provided in this section shall not be held civilly liable for hiring or contracting with a health care provider who the employer in good faith believes has been rehabilitated from drug abuse, absent the employer's gross negligence or reckless conduct.

(4) Notices of termination submitted hereunder shall be maintained and available to employers as set forth above for fifteen (15) years from the date of receipt by the professional licensing board.

- TITLE 37 - CHAPTER 27  
UNIFORM CONTROLLED SUBSTANCES

37-2705. Schedule I. (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

...

(42) Para-fluorofentanyl ~~(N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);~~  
(N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl) propanamide);

...

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

...

(31) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: ~~TCPy-TCPy;~~  
(32) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

37-2709. Schedule III. (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

...

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

...

~~(6) Ketamine, its salts, isomers, and salts of isomers - 7285. (Some other names for ketamine: (+/-) 2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone);~~ (6) Ketamine, its salts, isomers, and salts of isomers - 7285. (Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone);

37-2732. Prohibited acts A -- Penalties. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance.

...

(e) If any person is found to possess marijuana, which for the purposes of this subsection shall be restricted to all parts of the plants of the genus Cannabis, including the extract or any preparation of cannabis which contains

~~tetrahydrocannabinol~~, tetrahydrocannabinol, in an amount greater than three (3) ounces net weight, it shall be a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than ten thousand dollars (\$10,000), or both.

...

(k) Upon conviction of a felony or misdemeanor violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

37-2738. Sentencing criteria in drug cases. (1) Any person who pleads guilty to, is found guilty of or has a judgment of conviction entered upon a violation of the provisions of subsection (a), (b), (c) or (e); of section 37-2732, Idaho Code, shall be sentenced according to the criteria set forth herein.

(2) Prior to sentencing for a violation enumerated in subsection (1) above of this section, the defendant shall undergo, at his own expense (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code), a substance abuse evaluation at a facility approved by the Idaho department of health and welfare. Provided however, ~~that~~ if the defendant has no prior or pending charges under the provisions of subsection (a), (b), (c) or (e); of section 37-2732, Idaho Code, and the court does not have any reason to believe that the defendant regularly abuses drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of subsection (b), (c)(3), or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of a substance abuse evaluation with respect to a defendant's violation of the provisions of subsection (a), (b), (c) or (e); of section 37-2732, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or similar assessment which has evaluated the defendant's need for substance abuse treatment conducted within twelve (12) months preceding the date of the defendant's sentencing.

- Rule 152. Required Books. one (1) of the following current pharmacy references - Facts and Comparisons, Clinical Pharmacology, Micromedex Effective 3/20/04
- Rule 156.05. Return of Drugs or Other Items. Effective 3/20/04
- Rule 158.02.c. Ephedrine products that meet the following criteria..... Effective 3/16/04
- Rule 470. Requirements for Prescription Form-Discipline of Practitioners Effective 3/20/04